IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

CRP.No. 2021 of 1999(H)

CC.SM/2/88/ 0f TALUK LAND BOARD, PONANI
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REVN. PETITIONERS:
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1. **RAYINMARAKKAR VEETTIL KATTILUNGAL ALEEMA,**
   W/O LATE VEERALIPURATH ABDU, (P.O)
   MOOKKUTHALA, NANNAMUKKU VILLAGE, PONANI TALUK.

2. **VEERALIPURATH IBRAHIMKUTTY,**
   S/O LATE VEERALIPURATH ABDU,
   -DO- -DO-

3. **MOHAMED FAROOK,**
   S/O LATE VEERALIPURATH ABDU,
   -DO- -DO-.

4. **MOHAMMEDUNNI,**
   S/O LATE VEERALIPURATH ABDU,
   -DO- -DO-

5. **ASHRAF,**
   S/O LATE VEERALIPURATH ABDU,
   -DO- -DO-

6. **SAFIYA,**
   S/O LATE VEERALIPURATH ABDU,
   -DO- -DO-

7. **THAHIRA,**
   S/O LATE VEERALIPURATH ABDU,
   -DO- -DO-

8. **KAMARUDDIN,**
   S/O LATE VEERALIPURATH ABDU,
   -DO- -DO-

9. **MOHAMED NIVAS,**
   S/O LATE VEERALIPURATH ABDU,
   -DO- -DO-

BY ADV. SRI.A.A.ABUL HASSAN

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, THIRUVANANTHAPURAM.**

2. **TALUK LAND BOARD, PONANI.**

3. **TAHSILDAR, PONANI.**

BY GOVERNMENT PLEADER SRI. M.R. SABU.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/03/2007, ALONG WITH CRP NO. 2320 OF 2000 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NOs. 2021 OF 1999 and
2320 OF 2000

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Dated this the 22nd day of March, 2007.

O R D E R

These revision petitions are preferred against the order of the Taluk Land Board, Ponani in SM-2/88. As per the said order the Taluk Land Board directed the declarant to surrender 3.64 acres of land. It is against that decision C.R.P.2021/99 is filed by the legal representatives of the deceased declarant. The Government then filed a revision specifically challenging the order of the Taluk Land Board in excluding the lands in Sy.No.66/6 along with other general contentions. In order to dispose of these C.R.Ps. the matter has to be classified as,

(1) Whether the acquisition of lands after 1.1.70 can be taken into account in a proceedings u/s 85(7) of the Kerala Land Reforms Act? and

(2) Whether other contentions raised by the appellant's legal representatives are sustainable?

Points:

2. It is the case of the legal representatives of the deceased declarant that 70 cents of property in Sy.No.59/11 was purchased by the declarant in the year 1977 and another 1 acre 69 cents in Sy.No.298/1 had been obtained by the original declarant by virtue of a decree of the civil Court in A.S.11/91 as the legal representative of the original declarant's deceased brother. The competent civil Court found that out of 6.75 acres, the share of the original declarant is only 2/8, i.e. 1.69 acres. So an area of 70 plus 169 cents amounting to 2.39 acres had been obtained by the deceased declarant only after the commencement of the Kerala Land Reforms Act and only by virtue of a subsequent acquisition. In a ceiling case, to start with, the position of the declarant has to be reckoned as on 1/1/70 and suppose there is any subsequent acquisition it will be governed by Section 87 of the Kerala Land Reforms Act. When a proceeding u/s 87 is to be initiated the factum of disposal of property, attainment of majority of minors etc. will loom large and the properties obtained by him or disposed of by him

have to be deleted and so, the question of holding excess land would depend upon these factors. So, the law contemplates two different stages. One under Section 85 so far as 1.1.70 is concerned and second under Section 87 subsequent to 1.1.70. Admittedly, this is a case where proceedings have been initiated u/s 85 of the Kerala Land Reforms Act by which the ownership and possession as on 1.1.70 alone has to be reckoned. Therefore, 2 acres and 39 cents referred to above should not have been taken into account to fix the ceiling limit of the deceased declarant as on 1.1.70 and therefore excluded.

3. The next point to be considered is regarding 1.04 acres comprised in Sy.No.66/7. The declarant has got a specific contention that the said 1 acre and 4 cents of land does not belong to him at all and it belong to one Avaran and in support of the said contention the learned counsel for the revision petitioner made available before me a registration copy of the document No.1474/51 which would show that as early as in 1951 Mohamedunni had assigned this 1.04 cents of land in favour of Avaran. This Avaran

has nothing to do with the declarant and therefore for fixing the ceiling limit of the declarant, this 1 acre and 4 cents should not have been taken into account. Then it is contended by the learned counsel for the revision petitioner that 63 cents in Sy.No.296/3 does not belong to the minor son of the declarant and that he does not hold 1 acre and 64 cents in Sy.No.405/04 and also that he only owns 41.5 cents of land in Sy.No.307/7 and not 56 cents. The declarant also would submit that he has no objection if the Land Board finds that he is in possession of this 63 cents of land in Sy.No.296/3 or 14.5. cents in Sy. No.307/7 and 64 cents in Re.Sy.No.405/4 to take over the same. Or in other words, the specific contention of the revision petitioner that he holds only 41.5 cents in Re.Sy.307/7 and one acre in Sy.No.405/4. So, in any event, if the Land Board finds that there is any excess land he would submit that the Board may take possession from the said property which does not belong to him. On a calculation it can be seen that if the property is excluded u/s 87 it will come to 2.39 and by Avaran's document it is 1.04. That means out of 3.64 acres

ordered to be surrendered, 3.43 has to be excluded. So, what remains is only 21 cents of land. If the Board still holds the view that the declarant is in possession of 63 cents in Sy.No.296/3 or excessive extent of 15.5 cents in Sy.No.307 and 64 cents in Sy.no.405/4, the Board may take possession of 21 cents of land from these properties.

4. So far as the revision of the Government is concerned, the contention is that the Taluk Land Board should not have accepted the authorised officer's report regarding Sy.No.66/6. A perusal of the order would reveal that Parukutty Amma has obtained this property as early as in 1959 and she had subsequently obtained certificate of purchase for this property. So, it is only on the basis of the clear documentary evidence the said property is excluded. Therefore, it does not call for any interference. Therefore, the revision petitions are disposed of as follows.

5. C.R.P.2320/00 is dismissed. So far as C.R.P.2021/99 is concerned three acres and 43 cents, that is 70 cents in Sy.No.50/11, 169 cents in Sy.No.298/1 and 1 acre and 4 cents in

66/7 are excluded from the computation of the ceiling area of the declarant in these proceedings and after deleting the same if the Land Board finds that 21 cents of land has to be taken the Land Board may proceed against the properties in Sy.No.296/3 or 14.5 cents from Re.Sy.No.307/7 and 64 cents from Re.Sy.no.405/04. It is made clear that the Land Board cannot disturb the possession of the property which he claims to be in possession but should proceed against the property which he does not admit to be in his possession after hearing the concerned parties after notice. Accordingly, C.R.P. 2021/00 is disposed of as above.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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C.R.P. NOs. 2021/99 and 2320 OF 2000

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O R D E R

22nd March, 2007.